

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WET SOUNDS, INC.

Plaintiff,

vs.

ELETTROMEDIA S.R.L.

Defendant.

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Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Wet Sounds, Inc. (“Wet Sounds”) brings this action against defendant Elettromedia S.R.L. (“Defendant” or “Elettromedia”), and alleges:

THE PARTIES

1. Wet Sounds, Inc. is a corporation organized and existing under the laws of the State of Texas. Wet Sounds owns the entire right, title, and interest in the patent at issue in this case.

2. On information and belief, Elettromedia S.R.L. is a company organized and existing under the laws of Italy, with its principal place of business located at Strada Regina Km 3,500- Marignano, 62018 Potenza Picena (MC) Italy. Upon information and belief, Elettromedia does business in Texas and this District, directly and/or through intermediaries, and offers its products and encourages the use of such products, including those accused herein of infringement, to customers and potential customers located in Texas, including this District.

3. On information and belief, Elettromedia has official dealers, a distributor, agents and/or sales representatives, directly or through intermediaries, that regularly conduct business,

market, promote, install, use, sell and/or offer to sell products pertinent to this suit throughout Texas and this District.

4. Elettromedia may be served in accordance with Rule 4(h) and (f) of the Federal Rules of Civil Procedure by using any form of mail that the clerk addresses and sends to Elettromedia and that requires a signed receipt under Rule 4(f)(2)(C)(ii), or by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents under Rule 4(f)(1).

JURISDICTION AND VENUE

5. This is an action for patent infringement of U.S. Patent No. 8,568,162 (“the ‘162 patent”) arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code.

6. Subject-matter jurisdiction over Wet Sounds’ claims is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

7. On information and belief, Elettromedia is a foreign company, organized under the laws of Italy.

8. On information and belief, Elettromedia has solicited business in the State of Texas, transacted business within the State of Texas and/or attempted to derive financial benefit from residents of the State of Texas, including benefits directly related to the instant patent infringement cause of action set forth herein. Elettromedia, directly and/or indirectly, has committed direct acts of patent infringement and induced and/or contributed to the infringement by others in the United States, the State of Texas, and this District. Elettromedia engages in other persistent courses of conduct and derives substantial revenue from products provided to third parties in the United

States, the State of Texas, and this District. The Court also has personal jurisdiction over Elettromedia because minimum contacts have been established with the forum and the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

9. This Court has personal jurisdiction over Elettromedia for at least the reasons set forth in this Complaint, including the allegations that follow in the Background section of this Complaint.

10. Elettromedia is subject to personal jurisdiction in Texas and this District and is doing business in this District.

11. Venue is proper in this judicial district under 28 U.S.C. § 1391.

BACKGROUND

12. Wet Sounds is an award winning Texas based company headquartered in this District. Wet Sounds is well known for its audio systems in the marine and outdoor recreational industry. Wet Sounds was formed in 2005. Many of its products contain its innovative and proprietary technology, which has set it apart from others in the industry. Its products are well-known in the industry and by consumers as being of high quality. The inventions of the patent-in-suit are an example of Wet Sounds' technology.

13. Products covered by the '162 patent are utilized in the boating industry and other recreational industries. Texas is one of the top five states for recreational boating economic activity according to a 2019 news release by the National Marine Manufacturers Association (see <https://www.nmma.org/press/article/22428>).

14. Elettromedia makes, uses, sells, offers to sell and/or imports "Tower" speakers with "tower clamping" under Elettromedia's "Hertz" brand, more specifically models HTX 8 M-CL-W/C (the "Accused Products"). One application of the Accused Products is in the recreational

boating market. Elettromedia promotes the Accused Products as “Power For The Waves Pure Marine Certified Products.” Elettromedia also promotes the use of the Accused Products on UTVs (“Utility Task Vehicles”) on Elettromedia’s Hertz website, <https://www.hertzaudiovideo.com/>. Elettromedia has placed Accused Products into the stream of commerce, which products have been offered for sale to, sold to, and/or used by customers in the State of Texas and this District. Elettromedia placed Accused Products into the stream of commerce directly or indirectly through intermediaries that are known distribution channels, such as its distributor Elettromedia USA, official dealers, and agents or representatives of Elettromedia, its official dealers and/or Elettromedia USA. On information and belief, Elettromedia makes, uses, sells, offers to sell and/or imports other audio products that are placed into the stream of commerce, which products have been offered for sale, sold, and/or used to and by customers in the State of Texas and this District directly or indirectly through intermediaries such as Elettromedia USA, official dealers and agents or representatives of Elettromedia and/or Elettromedia USA. On information and belief, Elettromedia has targeted the State of Texas and this District for the sale and distribution of Elettromedia’s products, including Accused Products. On information and belief, Elettromedia’s United States Hertz website <https://us.hertzaudiovideo.com/where-to-buy-hertz-car-audio/find-a-dealer> includes an identification of official dealers of Hertz products, including official dealers located in Texas and this District. On information and belief, the above referenced website identifies at least five official dealers in this District. On information and belief, Elettromedia intends to serve the United States market through sales of its Accused Products. By and through its official dealers, Elettromedia is placing, and/or influencing the placement of, Accused Products and/or other products of Elettromedia into the stream of commerce, in Texas and in this District.

15. On information and belief, Elettromedia has made, used, sold, offered for sale and/or imported infringing Accused Products, and/or has placed such infringing products into the stream of commerce, which products have been made, offered for sale, sold, and/or used in the State of Texas and this District. On information and belief, Elettromedia knew or reasonably could have known that Accused Products would be sold in Texas and in this District. Sales of the Accused Products in Texas and this District are not isolated occurrences but instead arise from the efforts of Elettromedia to promote and provide products, directly or indirectly, to customers in the State of Texas and this District. Elettromedia, alone or in concert with Elettromedia USA and/or official dealers, placed Accused Products in the stream of commerce, knowing that the State of Texas and this District was a likely destination of such products.

16. The Accused Products are packaged in boxes bearing Elettromedia's name, address and phone number in Italy and its website:

“HERTZ Part of Elettromedia
Strada Regina KM 3,500 – Marignano
62018 Potenza Picena (MC) Italy
T +39 0733 870 870 – F +39 0733 870 880
www.elettromedia.it”

The packaging materials of the Accused Products also bear at least one trademark of Elettromedia registered with the United States Patent and Trademark Office.

17. On information and belief, Elettromedia has a distributor of Elettromedia products, including its Hertz brand of products, including the Accused Products, located in the United States.

18. Elettromedia's website for its Hertz brand of products, <https://www.hertzaudiovideo.com/>, specifically identifies Elettromedia USA as Elettromedia's United States distributor (see <https://www.hertzaudiovideo.com/where-to-buy-hertz-car-audio/find-a-dealer/>).

19. On information and belief, Elettromedia and/or its United States distributor has agents and representatives located within Texas and within this District.

20. On information and belief, Elettromedia's and/or its United States distributor's agents and representatives located within this District have sold and offered for sale Accused Products.


21. On information and belief, Elettromedia has knowledge of its or its United States distributor's agents and representatives located within Texas and within this District promoting Elettromedia's products, including the Accused Products.

22. On information and belief, Elettromedia's and/or its United States distributor's agents and representatives located within this District have sold and offered for sale in this District other products of Elettromedia.

23. Elettromedia's website provides information related to its Hertz brand of products and access to its Hertz website. Elettromedia's Hertz website includes videos of installed Hertz products, including video of Accused Products that, on information and belief, were installed within this District.

24. Elettromedia directly promotes and endorses the sale, installation and/or use of Accused Products within this District, including providing a link from its website, www.elettromedia.it to its website of its Hertz brand of products, <https://www.hertzaudiovideo.com/>, which at the time of the filing of this Complaint includes a video showing a UTV in which Accused Products were installed. Such video on the above referenced website has a website address of https://www.instagram.com/p/CLE_Z4zlfQz/ with the following text adjacent to the video at this link:

[hertz audio official](#)  UM

@grounded_auto_works POLARIS GENERAL Sound system installed. We've did a complete installation of Hertz Audio  system on this Polaris General for a customer of our. 2 pairs of 6.5", 1 pair of 8" tower speakers, 1 10" sub, 5 channels amp and 1 micro amp, and hertz HMR20 head unit.

On information and belief, Grounded Auto Works is located within this District at 7208 Boone Rd, Houston, Texas 77072.

25. Elettromedia also provides Owner's Manuals with the packaging materials of the Accused Products and on-line, including at <https://www.hertzaudiovideo.com/wp-content/uploads/2018/12/Marine-Speaker-Tower-Manual.pdf>.

26. Elettromedia is identified in the Elettromedia Owner's Manual for the Accused Products:

HERTZ
Part of Elettromedia
Strada Regina KM 3,500 – Marignano
62018 Potenza Picena (MC) Italy
T +39 0733 870 870 – F +39 0733 870 880
www.elettromedia.it

COUNT I – INFRINGEMENT OF THE '162 PATENT

27. On October 29, 2013, U.S. Patent No. 8,568,162 ("the '162 patent"), entitled "Mountable Loudspeaker Assemblies And Clamps," was duly and legally issued. The '162 patent has been assigned to Wet Sounds. Wet Sounds owns all right, title and interest in the '162 patent, including the right to sue for and recover all past, present and future damages for infringement of the '162 patent. A copy of the '162 patent is publicly available, including at the United States Patent and Trademark website, such as at the following link: <https://pdfpiw.uspto.gov/.piw?PageNum=0&docid=08568162&IDKey=F8F56EDBCCEF%0D%0A&HomeUrl=http%3A%2F%2Fpatft.uspto.gov%2Fnetacgi%2Fnph-Parser%3FSect1%3DPTO1%2526Sect2%3DHITOFF%2526d%3DPALL%2526p%3D1%2526u>

[%3D%25252Fnethtml%25252FPTO%25252Fsrchnum.htm%2526r%3D1%2526f%3DG%2526l%3D50%2526s1%3D8568162.PN.%2526OS%3DPN%2F8568162%2526RS%3DPN%2F8568162.](#)

28. The ‘162 patent is presumed valid.

29. Wet Sounds’ commercial products have been marked with notice of the ‘162 patent pursuant to 35 U.S.C. § 287 during all relevant time periods.

30. Elettromedia makes, uses, sells, offers to sell and/or imports Accused Products. The Accused Products of Elettromedia infringe at least claims 15-17 of the ‘162 patent.

31. On information and belief, Elettromedia had knowledge of the ‘162 patent prior to the filing of this lawsuit.

32. The Accused Products include a clamp for mounting a speaker.

33. The clamp of the Accused Products includes one portion that is affixed or capable of being affixed to the speaker via screws.

34. The clamp of the Accused Products includes a second portion that is capable of being mounted to a support structure, such as a tubular structure on a boat or UTV.

35. The first portion and the second portion of the clamp of the Accused Products house electrical contacts for audio signal transmission, ground connection and light signal transmission.

36. The electrical contacts of the Accused Products include electrical pins and electrical pin receptacles.

37. Elettromedia’s Owner’s Manuals instruct and encourage “Round pipe mounting” installation of the Accused Products, as for example <https://www.hertzaudiovideo.com/wp-content/uploads/2018/12/Marine-Speaker-Tower-Manual.pdf>.

38. Elettromedia's Owner's Manuals instruct and encourage circuit wiring for the speaker and LED lighting.

39. On information and belief, Elettromedia, either alone or in conjunction with others, has in the past and continues to directly infringe, induce infringement of and/or contribute to infringement of the '162 patent by making, using, selling, offering to sell, and/or importing, and/or causing others to make, use, sell, or offer to sell, and/or import, in this judicial district and/or elsewhere in the United States, Accused Products, that alone or in use are covered by one or more claims of the '162 patent, such as claims 15-17.

40. Customers purchase, install and/or use the Accused Products and are instructed and/or encouraged by Elettromedia to install and use such products in a manner that infringes one or more claims of the '162 patent, such as claims 15-17.

41. Elettromedia provides encouragement and/or instructions to its distributor, official dealers, installers and/or end users in the United States that encourage and instruct such persons to make, sell, offer to sell, import and/or use Elettromedia's Accused Products in an infringing manner, specifically intending such persons will undertake such actions with regard to the Accused Products, and knowing such actions constitute infringement of one or more claims of the '162 patent.

42. Elettromedia indirectly infringes one or more claims of the '162 patent in violation of 35 U.S.C. 271(b) by inducing its customers to directly infringe one or more claims of the '162 patent through their use of such Accused Products in accordance with Elettromedia's instructions and encouragement.

43. For example, Elettromedia induces direct infringement of the '162 patent by providing Owner's Manuals, technical data and instructions that encourage the installation and use

of the Accused Products, and/or providing a website that enables customers to locate a United States based distributor or official dealer of the Accused Products to obtain, install and/or use the Accused Products such that, by following Elettromedia's encouragement, the customers of the Accused Products directly infringe one or more claims of the '162 patent. Elettromedia engages in such inducement knowingly and, at least from the time of receipt of the Complaint, has done so with knowledge that such activity encourages customers of its Accused Products to directly infringe the '162 patent.

44. Elettromedia indirectly infringes one or more claims of the '162 patent in violation of 35 U.S.C. 271(c) as a contributory infringer by selling, offering to sell, directly or indirectly, and/or importing into the United States the Accused Products with knowledge of the '162 patent, at least from the time of filing this Complaint, and knowledge that the Accused Products as installed is an infringement of the '162 patent claims, and knowing that the Accused Products are especially made or especially adapted for use in an infringement and are not a staple article of commodity of commerce suitable for substantial non-infringing use. For example, the clamp of the Accused Products is made and/or adapted for use in mounting a speaker in an infringing manner and has no substantial non-infringing use.

45. Elettromedia is liable for infringement of the '162 patent pursuant to 35 U.S.C. § 271.

46. Elettromedia's acts of infringement are causing Wet Sounds to sustain damages and will continue to do so unless and until enjoined by order of this Court. Elettromedia is liable to Wet Sounds in an amount that adequately compensates Wet Sounds for Elettromedia's infringement, which can be no less than a reasonable royalty pursuant to 35 U.S.C. § 284. These infringing acts have caused and will continue to cause immediate and irreparable harm for which

there is no adequate remedy at law. Wet Sounds is entitled to an injunction to prevent further infringement pursuant to 35 U.S.C. § 283.

47. Elettromedia's infringement of the '162 patent is willful, and Wet Sounds is accordingly entitled to enhanced damages pursuant to 35 U.S.C. § 284.

48. This is an exceptional case such that Elettromedia should be required to pay Wet Sounds' reasonable attorneys' fees in accordance with 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Wet Sounds prays for entry of judgment that:

A. Elettromedia has directly infringed, induced infringement and/or contributed to the infringement of the '162 patent;

B. Elettromedia account for and pay to Wet Sounds all damages caused by Elettromedia's infringement of the '162 patent and for which Wet Sounds is entitled under Title 35 of the United States Code;

C. That Elettromedia, its officers, directors, employees, agents, and all those acting in concert with Elettromedia be enjoined, pursuant to 35 U.S.C. §283, from all future activities infringing the Wet Sounds' '162 patent, and/or inducing or contributing to the infringement of Wet Sounds' '162 patent by others, including making, using, selling, offering for sale and/or importing the claimed subject matter of the '162 patent;

D. That this Court order that damages so found or assessed be enhanced or trebled as a result of willful, deliberate, wanton and reckless infringement by Elettromedia, as provided by 35 U.S.C. § 284;

E. That this Court order that, because this is an exceptional case, Wet Sounds be awarded and Elettromedia be ordered to pay the reasonable attorneys' fees incurred by Wet Sounds in connection with this action, as provided for by 35 U.S.C. § 285;

F. Wet Sounds be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Elettromedia's patent infringement;

G. Costs be awarded to Wet Sounds; and,

H. Wet Sounds be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Wet Sounds demands trial by jury on all claims and issues so triable.

Respectfully submitted,

Dated: March 1, 2021

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